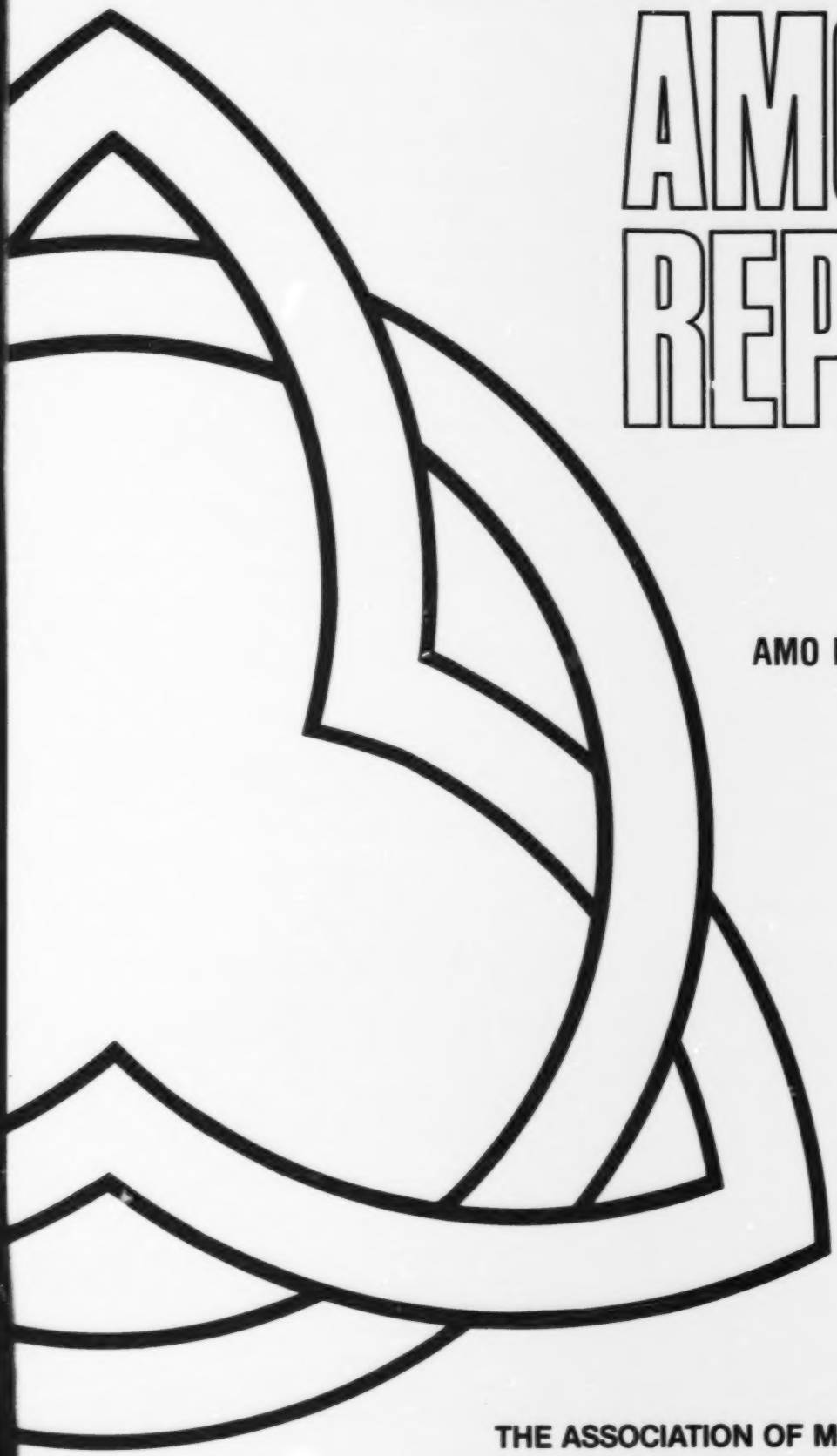

AMO REPORTS 82-9

AMO REPORT ON AMENDMENTS TO THE POLICE ACT

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
JUNE 1982

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body comprises some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

Association Sections:

* County and Regional Section
* Large Urban Section
* Northern Ontario Section (FONOM/NOMA)
* Rural (ROMA) Section
* Organization of Small Urban Municipalities Section

Association Affiliates:

* Association of Municipal Clerks and Treasurers of Ontario
* Association of Municipal Tax Collectors of Ontario
* Municipal Engineers Association
* Ontario Municipal Administrators Association
* Ontario Municipal Personnel Association
* Ontario Municipal Social Services Association
* Society of Directors of Municipal Recreation of Ontario

To the Municipal Clerk:

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"AMO Reports 82-9" was presented to the Honourable George Taylor, Solicitor General of the Province of Ontario on June 9, 1982.

AMENDMENTS TO THE POLICE ACT

INTRODUCTION

Over the past several years, the municipal Associations, on behalf of their membership have traditionally had a strong commitment to improving legislation affecting municipalities and particularly in their role as the provider of police and fire services. The issue of amendments to The Police Act is one of very long-standing. Resolutions calling for amendments have been the subject of numerous Cabinet submissions and reports over several years and have been submitted to a succession of Solicitors General without success.

The need for amendments to The Police Act is urgent and it is essential that legislative amendments be introduced as quickly as possible.

The amendments that have been proposed by the municipal Associations deal with management prerogatives, exemptions from the bargaining unit, compulsory and binding arbitration and the composition of police commissions. More specifically they deal with:

Management Prerogatives (Sections 29 through 41)

We recommend that the Act be amended to state:

> Every collective agreement shall be deemed to provide that it is the exclusive function of the Board or committee of council where there is no Board to manage the police force and without limiting the generality of the foregoing, include the right to determine employment, appointment, complement, organization, assignment and deployment, reclassification, promotion, work methods and procedures, type, quantities and locations of equipment, classifications of positions, and subject to the Act and the Regulations thereto, demotion, dismissal, discipline and suspension.

(See Appendix A)

Exemptions from the Bargaining Unit

Clarification is required to determine the members of the police force who have the right to be represented by the police Associaton. In this regard, the following exemptions should be clearly stated in the Act:

chiefs of police, deputy chiefs of police and any senior officers as defined in Section 30 of the existing Act.

In revising this section, reference should be made to Section 1(3)(b) of The Labour Relations Act which states:

> "No person shall be deemed to be an employee who, in the opinion of the (Labour Relations) Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations."

Composition of Bargaining Committee

The Act should be revised to provide that the police Association, or Associations as the case may be, and Board of Commissioners or Committee of Council as the case may be, have the right to determine the composition of their bargaining committee up to a maximum of five.

Compulsory and Binding Arbitration

The Association of Municipalities of Ontario prepared and submitted to the Provincial Government in 1980, an extensive report on compulsory and binding arbitration. The report outlines the serious and wide-ranging concerns that municipalities have regarding the present process. Several amendments are recommended in the report. The recommendations include the following:

* That compulsory conciliation, mediation, or other non-binding intervention be employed before continuing to binding arbitration.

* That there be a recognition that the public service is one, that collective bargaining is an entity, and that if binding arbitration is to be invoked, there should be a single system administered by a single agency and consistent as to procedures, formation, qualifications of the arbitrator and payment of costs and so forth for those services now subject to the process.

* That arbitration proceedings be guided by a set of criteria established by statute and designed to assure the promotion of the public interest and to avoid the frustration of public policy. These criteria should be similar to those set forth in The Crown Employees Collective Bargaining Act but extended to include specific reference to public interest, public policy and local economic conditions.

The complete recommendations of the AMO report are included in Appendix B. Also included in the Appendix is a list of criteria for consideration by arbitrators in determining the terms of a collective agreement.

Police Commissions

The municipal Associations' report on Special Purpose Boards and Commissions (January, 1980) recommended:

That police commissions be retained.
That all members be appointed by municipal council.
That members of the municipal council may form a majority with a provision for the appointment of non-elected persons.
That the head of council preferably sit on the commission.
That council approve the budget of police commissions subject to appeal to the Solicitor General by the local police commission or by the Ontario Police Commission.

Budget Provision for Monetary Demands (Section 37)

Section 37 of The Police Act states that:

"Upon receipt of a written request made under Section 29 (1) council shall make provision as in its opinion will be adequate for the payment of any expenditure resulting from such agreement, decision or award".

AMO recommends that this section be deleted immediately. In view of current arbitration awards, it is impossible to determine an "adequate" provision.

Recovery of Legal Costs (Section 24)

The provisions of Section 24(6) provide that:

> "The council of a municipality may, in such case and to such extent as it thinks fit, pay any damages or costs awarded against a member of a police force ... in any civil or criminal proceeding brought against him".

There are a number of costs that have been incurred by members of police forces which have arisen out of counter-charges made by citizens after they have been arrested and charged by the police. In many cases these individuals have been defended by lawyers under The Legal Aid Act.

AMO suggests that there be a provision added to subsection 6 which would allow the municipalitiy to reclaim, from The Legal Aid Act, those costs that have been paid by the municipality on behalf of the member when the member has been acquitted.

Duties and Powers of Members of Police Forces (Section 55)

A provision should be included here or elsewhere in The Police Act to permit municipalities to recover, from the Provincial Government, the cost of providing security services for the Province in Provincial Courts or at other Provincial proceedings or Provincial premises.

REGULATION 791

Sections 16, 17, 18, 19, and 20

Revision to these sections should be made to provide for separate provisions dealing with minor and major offences. This distinction should be removed from this Regulation. In these same sections AMO feels that as the current provision now stands where no appeal is made to an imposed punishment, the Board of Commissioners or committee of council must approve the punishment by confirming, mitigating, committing or remitting.

This provision should be amended to provide for the Board of Commissioners or committee of council to "alter the punishment as it deems just whether or not an appeal is made".

Section 27(b)

This section should be clarified to avoid any ambiguity respecting whether the service needs to be with one force or whether only constables have probationary periods.

AMO recommends that the section be amended to the following:

> (b) "To dispense with the service of any police officer within 24 months of his becoming a police officer with the force."

Section 27(e)

The applicaton of Section 27(e) in its present form, to allow a Board or council to discharge or place on retirement a person who is mentally or physically disabled or incapable of performing his duties in a manner fitted to satisfy the requirement of his position, has caused many difficulties.

It is questionable whether the Board or council can order the member to submit to a medical examination by two doctors, and if he submits he may only choose doctors that are prepared to be sympathetic to his position, and further he may refuse to allow the doctors to provide a medical report of his condition, so that in all the ability to collect the evidence to be presented at the hearing is most difficult. We recommend that the section be amended as follows:

> 27(e) "To discharge or place on retirement, if he is entitled thereto, any member of the force who, on the evidence of two legally qualified medical practitioners is, due to mental or physical disability, incapable of performing his duties in a manner fitted to satisfy the requirements of his position but any decision of the Board or council made pursuant to this clause may be appealed to the Commission. For the purposes of this section, a member of the force shall comply with the direction from the Board or council to submit to medical examinations as required and to present the complete results of those examinations to the Board or council."

Section 32

This section should be amended to read as follows:

"No chief of police, constable or other police officer shall be apppointed to a police force unless he:

1. (a) is a Canadian Citizen;
   (b) is 21 years of age or over;
   (c) is certified by a legally qualified medical practitioner to be in good health, mentally and physically and fit for duty as a member of a police force;
   (d) produces satisfactory proof of having successfully completed at least Grade 12 secondary school education;
   (e) is of good moral character and habits

2. (a) The Commissioner is not obliged to give any reason for the rejection of an applicant."

Conclusion

AMO urges the Provincial Government to enact legislative amendments to The Police Act as soon as possible. The Association's underlying concern is to improve a public service. The efficient use of public funds is the responsiblity of elected representatives and our recommendations are based on that concern.

APPENDIX A

1. Alternatively, AMO recommends that there is existing legislation such as The Public Service Act that should serve as a model for a revised Police Act.

Section 27(4) of The Public Services Act is as follows:

> Except in relation to matters governed by or under The Police Act, every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine employment, appointment, complement, organization, work methods and procedures, kinds and location of equipment, discipline and termination of employment, assignment, classification, job evaluation system, merit system, training and development, appraisal, superannuation and the principles and standards governing promotion, demotion, transfer, lay-off and reappointment, and that such matters will not be the subject of collective bargaining nor come within the jurisdiction of the Negotiating Committee or the Arbitration Committee.

APPENDIX B

Summary of Recommendations contained in AMO Reports 40 entitled Compulsory and Binding Arbitration.

1. That compulsory conciliation, mediation, or other non-binding intervention be employed before continuing to binding arbitration.

2. That there be a recognition that the public service is one, that collective bargaining is an entity, and that if binding arbitration is to be invoked, there should be a single system administered by a single agency and consistent as to procedures, formation, qualifications of the arbitrator, payment of costs and so forth for those services now subject to the process.

3. That arbitration proceedings be guided by a set of criteria established by statute and designed to assure the promotion of the public interest and to avoid the frustration of public policy. These criteria should be similar to those set forth in The Crown Employees Collective Bargaining Act but extended to include specific reference to public interest, public policy and local economic conditions.

4. That there be a system for accrediting and providing training for arbitrators (either single or chairmen) and that there be a small core of full-time arbitrators with tenure.

5. That a system of automatic review of awards be established so that prior to issuing of the award the arbitrator could reconsider the implications of his award on the public interest and public policy.

6. That there be recognition by the Provincial Government of the linkage between the arbitration process and the funding of public service.

CRITERIA TO BE CONSIDERED BY ARBITRATORS IN DETERMINING THE TERMS OF A COLLECTIVE AGREEMENT

The arbitrator shall examine into and decide on matters that are in dispute within the scope of collective bargaining under this Act.

In the conduct of proceedings before him and in rendering a decision in respect of a matter in dispute, the arbitrator shall consider any factor that to him appears to be relevant to the matter in dispute including,

(a) the needs of the municipality and its agencies for qualified employees;

(b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the arbitrator may consider relevant;

(c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees;

(d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;

(e) the need to establish wage rates and benefits within the framework of Provincial or Federal Government guidelines, policy directives or legislation including any provincially-imposed restraints on public spending; and,

(f) the need to establish salaries and working conditions compatable with the economy of the municipality or area and having regard to wage settlements in all sectors so that no group of public servants are unduly isolated from the disciplines of the economy by reason of compulsory and binding arbitration. (prepared by Robert Wilson, Municipal Police Authorities)

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